

**United States Department of Labor
Employees' Compensation Appeals Board**

J.S., Appellant)
and) Docket No. 13-1678
DEPARTMENT OF AGRICULTURE,) Issued: April 3, 2014
OFFICE OF THE INSPECTOR GENERAL,)
Portland, OR, Employer)

)

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 3, 2013 appellant filed a timely appeal of a June 11, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) accepting appellant's claim for temporary aggravation of chronic myofascial pain syndrome. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP met its burden of proof to establish that the employment-related aggravation of appellant's chronic myofascial pain syndrome resolved as of December 20, 2012.

Appellant appealed the determination and contended that his myofascial pain syndrome was a permanent result of his employment. He noted that other federal agencies found him to be

¹ 5 U.S.C. § 8101 *et seq.*

permanently disabled, that his physician indicated that his condition was chronic and permanent, and that he had numerous restrictions which prevented him from returning to work.

FACTUAL HISTORY

On November 22, 2013 appellant, then a 58-year-old auditor, filed an occupational disease claim alleging that as a result of sitting for long periods of time, including on long airplane and car rides, he suffered from severe chronic pain. He noted that he had a prior traumatic injury from a gunshot wound to the abdomen and that the pressure of sitting for long periods of time aggravated the previously damaged area causing him severe chronic abdominal pain. Appellant alleged that the severity of the pain increased and that he was currently not able to work. In a statement accompanying his claim he noted that he was shot in 1980, in an unrelated event, when he was a witness to a kidnapping. Appellant stated that in approximately 2004 he started experiencing increasing levels of chronic pain in the right abdominal area radiating down to the groin. He noted that his job as an auditor required him to travel to perform field work and teach auditor training classes and that getting up after sitting started to become more painful. Appellant noted that he started to have trouble sleeping because of pain and that fatigue caused him to fall asleep during important meetings and briefings. He alleged that he was diagnosed with syncope. Appellant noted several instances where pain caused him to pass out. He indicated that by 2010 it became increasingly difficult to endure any period of sitting. Appellant contended that in May 2011 he had reached his limits of physical and mental abilities to deal with chronic pain.

By letter dated January 17, 2012, OWCP controverted appellant's claim, contending that he failed to show fact of injury and noting that pain is not a medical diagnosis for purposes of FECA. The employing establishment also noted that it was reviewing the travel requirements of his position.

In a February 7, 2012 report, Dr. Jill Bachmann, appellant's treating physician who is Board-certified in family medicine, noted that appellant had a past medical history of a gunshot wound to the abdominal region when he was 26. She noted that the trauma care involved an exploratory laparotomy, bowel resection and partial gastrectomy and that subsequently he had hernia repairs and a cholecystectomy. Dr. Bachmann indicated that his last abdominal surgery took place in 2000. She further noted that he has since developed chronic myofascial pain involving the rectus abdominis and trunk flexors with secondary tightness and restriction to his range of motion. Dr. Bachmann noted that his work required long periods of sitting both at a desk and in airplanes and cars and that transitional movements, such as standing and pulling luggage resulted in uncontrolled pain due to his chronic condition. She discussed his computerized tomography (CT) scan of the abdomen in June 2010 which revealed surgical changes without evidence of bowel obstruction or adhesions, his x-ray of his hip which did not show any dislocation or arthritis and that the joint space of the right hip was normal and well preserved. Dr. Bachmann noted that on examination he had significant tenderness to palpitation of the rectus abdominis on the right greater than left and decreased range of motion of the hip flexors. She discussed his treatment and stated that his condition was chronic and permanent and aggravated by the work requirements of his employment.

In a March 2, 2012 letter, the employing establishment argued that appellant's condition was causally related to his gunshot wound and not to his employment. It contended that in 2011 he travelled only five times in five months and there were no agency restrictions prohibiting him from getting up and moving around or alternating between standing and sitting, as needed.

By decision dated March 21, 2012, OWCP denied appellant's claim, finding that he did not establish fact injury. It determined that he did not submit any medical evidence containing a medical diagnosis in connection with his work duties/activities.

On April 16, 2012 appellant requested an oral hearing before an OWCP hearing representative.

By decision dated June 12, 2012, OWCP's hearing representative found that the medical evidence established an uncontested inference that required further development and remanded the case for OWCP to refer appellant to a second opinion physician.

On November 8, 2012 OWCP referred appellant to Dr. John Keppel, a physician Board-certified in internal medicine and pulmonary disease, for a second opinion. In a December 20, 2012 report, Dr. Keppel listed his diagnosis as myofascial pain of the abdomen after a gunshot wound, slightly improved after being removed from the workplace 18 months ago. He noted no pulmonary issues. Dr. Keppel further found that appellant had returned to his baseline status of symptomatic myofascial pain and that his aggravation was temporary. On February 4, 2013 he responded to questions from OWCP and noted that appellant's chronic myofascial pain syndrome was not employment related, that he only suffered a temporary slight worsening of his condition and that he did show improvement when he left his employment.

By decision dated March 5, 2013, OWCP denied appellant's claim as it found that he had not established that his medical condition was causally related to his accepted employment duties. On March 20, 2013 appellant requested an oral hearing.

In a decision dated June 6, 2013, OWCP's hearing representative found that the evidence was sufficient to accept the claim for a temporary aggravation of chronic myofascial pain syndrome, resolved by December 20, 2012. Accordingly, she reversed the March 5, 2013 decision and indicated that the case should be accepted for temporary aggravation of chronic myofascial pain syndrome involving the rectus abdominis and trunk flexors, resolved by December 20, 2012.

By decision dated June 11, 2013, OWCP accepted appellant's condition for temporary aggravation of chronic myofascial pain syndrome involving the rectus abdominis and trunk flexors, resolved. It indicated that his case had been accepted and then closed because his condition had resolved as of December 20, 2012.

LEGAL PRECEDENT

The United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.² Once OWCP accepts a claim

² *Id.* at § 8102(a).

it has the burden of justifying modification or termination of compensation. After it has determined that an employee has disability causally related to his or her employment, it may not terminate compensation without establishing that the disability has ceased or is no longer related to the employment injury.³ The fact that OWCP accepted an employee's claim for a specified period of disability does not shift the burden of proof to the employee. The burden is on OWCP to demonstrate an absence of employment-related disability or residuals in the period subsequent to the date of termination or modification.⁴

Under FECA, when employment factors cause an aggravation of an underlying physical condition, the employee is entitled to compensation for periods of disability related to the aggravation.⁵ When the aggravation is temporary and leaves no permanent residuals, compensation is not payable for periods after the aggravation ceased.⁶

ANALYSIS

OWCP advised appellant of the acceptance of his condition for temporary aggravation of chronic myofascial pain syndrome involving the erector spinae and trunk flexors and that said aggravation resolved as of December 20, 2012. Its acceptance of a claim for a specified period does not shift the burden of proof to the claimant to demonstrate that he remains disabled thereafter. It is OWCP's burden to demonstrate the absence of employment-related disability for the period following termination or modification of benefits.⁷

OWCP found, based on the opinion of Dr. Keppel, that the accepted condition resolved as of the date of his December 20, 2012 report. Dr. Keppel found that appellant's chronic myofascial pain syndrome was not employment related as it was due to an unrelated gunshot wound, and that whereas appellant did suffer a temporary slight worsening of his condition as a result of his activities of federal employment, this aggravation was temporary and his condition had returned to baseline. There is no other medical evidence of record from a physician to support that appellant had any employment-related condition after December 20, 2012. The Board finds that the medical evidence of record is sufficient to establish that his accepted condition had resolved and, thus, OWCP has met its burden of proof.

On appeal, appellant submitted evidence that the Office of Personnel Management and the Social Security Administration had found him to be permanently disabled. The Board has long held that entitlement to benefits under statutes administered by other federal agencies do not establish entitlement to benefits under FECA. Decisions made by such federal agencies pursuant to different statutes that have varying standards for establishing disability and eligibility for

³ *Edwin Lester*, 34 ECAB 1807 (1983); *see also K.W.*, Docket No. 12-826 (issued August 14, 2012).

⁴ *See Elsie L. Price*, 54 ECAB 734, 739 (2003); *Raymond M. Shulden*, 31 ECAB 297 (1979); *Anna M. Blaine (Gilbert H. Blaine)*, 26 ECAB 351 (1975).

⁵ *Raymond W. Behrens*, 50 ECAB 221, 222 (1999); *James L. Hearn*, 29 ECAB 278, 287 (1978).

⁶ *R.W.*, Docket No. 13-1420 (issued December 11, 2013).

⁷ *See id.*

benefits and are not dispositive in FECA proceedings.⁸ Furthermore, although appellant contends that Dr. Bachman found his condition to be permanent and chronic, she did not indicate that the aggravation caused by his employment continued after December 20, 2012. The fact that he still suffers from the underlying condition is not dispositive. The medical evidence established that the temporary aggravation of appellant's myofascial pain syndrome had ceased and that he had returned to his baseline condition.

Appellant may submit evidence or argument with a written request for reconsideration within one year of this merit decision pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP met its burden of proof to establish that the employment-related aggravation of appellant's chronic myofascial pain syndrome resolved as of December 20, 2012.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 11, 2013 is affirmed.

Issued: April 3, 2014
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁸ R.S., Docket No. 10-2221 (issued August 19, 2011).